Millwright and Machinery Erectors Union Local 1906 (Chicago Steel Ltd. and J. W. Ferrell Concrete Company, Inc.) *and* U.S. Steel Group, a Unit of USX Corporation

Metropolitan District Council of Philadelphia and Vicinity, United Brotherhood of Carpenters and Joiners of America (Chicago Steel Ltd. and J. W. Ferrell Concrete Company, Inc.) *and* U.S. Steel Group, a Unit of USX Corporation. Cases 4–CD–847–1 and 4–CD–847–2

March 12, 1993

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

The charges in this Section 10(k) proceeding were filed September 10, 1992, by U.S. Steel Group (USS), alleging that the Respondents, Millwright and Machinery Erectors Union Local 1906 (Millwrights) and Metropolitan District Council of Philadelphia and Vicinity, United Brotherhood of Carpenters and Joiners of America (Carpenters Council) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing Chicago Steel Ltd. (Chicago Steel) and J. W. Ferrell Concrete Company, Inc. (the Employer, Ferrell) to assign certain work to employees represented by the Carpenters Council rather than to employees of the Employer not represented by any labor organization.[1] The hearing was held October 19, 1992, before Hearing Officer Carmen P. Cialino Jr. Thereafter, USS filed a brief in support of its positions, and the Millwrights and the Carpenters Council jointly filed a brief in support of their positions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, a New Jersey corporation, is a construction contractor operating in New Jersey, Pennsylvania, and Delaware, with an office in Vincentown, New Jersey, where it annually purchases goods and materials valued in excess of $50,000 directly from points outside the State of New Jersey. Chicago Steel, a limited partnership with headquarters in Gary, Indiana, is engaged in the processing of steel products; it annually purchases goods and materials valued in excess of $50,000 directly from points outside the State of Indiana. USS, a Delaware corporation, manufactures steel products at its Fairless Works facility in Falls Township, Pennsylvania, where it annually ships goods and materials valued in excess of $50,000 directly to points outside the Commonwealth of Pennsylvania. We find that Ferrell, Chicago Steel, and USS are engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find that the Millwrights and the Carpenters Council are, as stipulated at the hearing, labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

This work assignment dispute involves concrete machine foundation work which was being performed, until September 9, 1992,[2] by Ferrell's unrepresented employees pursuant to a contract with Chicago Steel at the Fairless Works facility owned by USS. The Fairless Works is a steel production facility situated on about 4000 acres of property; USS employs more than 750 employees at this site. Chicago Steel had leased one of the buildings at the Fairless Works from USS for the purpose of setting up and operating a steel tension-leveling plant.[3] At the time of the work dispute Chicago Steel was renovating the leased building and otherwise setting up its tension-leveling operation, which was expected to commence in December.

Part of this preparatory work was the setting of concrete foundations on which the tension-leveling machinery would be installed. As indicated above, Chicago Steel contracted with Ferrell for the performance of this foundation work, and Ferrell began the work—the work in dispute here—in late August. Details of the foundation work included the reading of blueprints, carpentry work, the pouring of concrete, the setting of anchor bolts in the concrete foundations, and cleanup work. The number of employees engaged in the work varied between 12 and 15.

The Carpenters Council is a council of trade union locals in the Philadelphia area under the aegis of the United Brotherhood of Carpenters and Joiners of America. Fourteen locals make up the membership of the Council: Nine are Carpenter locals and the rest are ''specialty'' trade locals. The Millwrights are one of these ''specialty'' trade local unions.

At approximately 6 a.m. on September 9, about 20 pickets appeared at the main, and normally the only, entrance to the Fairless Works. About 10 of the pickets

[1] The Charging Party's motion to amend the charge in Case 4–CD–847–1, to state that the Millwrights sought to have the work in dispute assigned to employees represented by the Carpenters Council, is granted.

[2] All dates hereinafter are in 1992.

[3] Tension-leveling is a process by which steel products are, inter alia, cleaned, flattened, and packaged before being marketed to customers.

were members of the Millwrights. The pickets carried signs which apparently had an area standards message, claiming that Ferrell paid substandard wages and that this was unfair to the ''Carpenters Union.'' The picketing backed up traffic considerably. When a second entrance to the Fairless Works was opened to ease the congestion, several of the pickets moved to the new entrance. It is apparent that entry to and egress from the Fairless Works was very limited for both employees and suppliers because of the picketing; several cars and trucks seeking to enter were seen to turn around and drive away.

Dan Phillips, general manager of the Chicago Steel operation at the Fairless Works, was caught in the traffic jam. He left his car and walked to the main entrance, where he met John Coyne, a representative of the Carpenters Council, and John Hooven, a representative of the Council and an official of the Millwrights. Following discussions with them, Phillips sent Ferrell's employees home and canceled a concrete pour which had been scheduled to occur that day. At about 8 a.m., when informed of Phillips' actions, Coyne caused the picketing to cease. Thereafter he arranged a meeting with Phillips to resolve fully the Carpenters Council's problem with Ferrell. Later that morning, Coyne and Hooven met with Phillips, with Chicago Steel's president joining the discussion in a conference call from Gary, Indiana. Pursuant to this discussion, Chicago Steel and the Carpenters Council agreed that Ferrell would complete its foundation work with a composite crew consisting of four Carpenter-represented employees supplied by the Council and about 10 of Ferrell's unrepresented employees. Subsequently, Ferrell, which under its contract with Chicago Steel controlled the assignment of work on the concrete foundation job, agreed to the composite arrangement. Virtually all of the remainder of the disputed work was performed by the composite crew. The job was completed about October 9.

B. *Work in Dispute*

The disputed work is the concrete machine foundation work performed by Ferrell, the Employer, for Chicago Steel in the building Chicago Steel had leased from USS at USS' Fairless Works facility.

C. *Contentions of the Parties*

USS contends[4] that there is reasonable cause to believe that the Respondent Unions have violated Section 8(b)(4)(D) in light of their conduct on September 9. USS argues that this dispute is not moot merely because the work at issue has been completed, and that the Millwrights' liability under the Act lies in its unlawful conduct in support of the Carpenters Council's claim that the disputed work be assigned to Carpenter-represented employees. On the merits of the dispute, USS contends that the work assignment award should be made to the Employer's unrepresented employees based on the factors of employer preference and past practice, relative skills, and economy and efficiency of operation.

The Carpenters Council and the Millwrights (the Unions) contend, as a preliminary matter, that the Board's notice of hearing should be quashed, citing two grounds. First, they argue that the Millwrights made no claim to the disputed work for employees it represents, pointing out the absence of any ''millwright work'' being at issue.[5] The Unions also contend that the Millwrights, as an entity, did not participate in the picketing on September 9—rather, that Hooven and Millwright members each acted individually in support of the Carpenters Council. As their second ground to quash the notice of hearing, the Unions argue that the instant work dispute is moot because the work has been completed and there is no evidence that similar disputes will occur in the future. On the merits of the dispute, the Unions argue that the work-assignment award should be made to the composite crew of Carpenter-represented employees and the Employer's unrepresented employees, based on the demonstrated preference of Chicago Steel and Ferrell, and on the requisite skills to perform the work possessed by the Carpenters' employees as well as the Employer's unrepresented employees.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

The record indicates that there is sufficient evidence to find reasonable cause to believe that the Carpenters Council violated the Act by its picketing activity on September 9. Thus Donald Rizer, a USS official, testified that he spoke to Coyne at the picket line, asking him what the problem was. According to Rizer, Coyne responded that Ferrell was ''using non-union carpenters and they are doing work that is ours.'' In addition, Phillips of Chicago Steel testified that during a conversation with Coyne at the picket line Coyne told him that he was trying to put his people to work. Further, the ''resolution'' of the dispute worked out between Chicago Steel and the Carpenters Council on September 9 showed a crew combining Ferrell's unrepresented employees with four Carpenter-represented

[4] Chicago Steel and Ferrell were not represented at the hearing and did not file briefs with the Board.

[5] Millwrights Official Hooven, in testifying on the nature of ''millwright work,'' stated that millwright employees ''set machinery, install machinery, erect machinery, take machinery out, whatever.''

employees, thus reflecting a partial assignment of the work in the Council's favor. Overall, this evidence establishes reasonable cause to believe, and the Carpenters Council does not dispute, that the Council made a claim to the concrete foundation work being done by Ferrell's employees, and that an objective of the picketing on September 9 was to coerce an assignment consistent with this claim, in violation of Section 8(b)(4)(D).[6]

Concerning the Millwrights' alleged unlawful picketing, and specifically the Unions' motion to quash the notice of hearing with respect to this alleged conduct, we find it clear on this record that the Millwrights did not make an independent claim for the work in dispute. However, in view of the unchallenged existence of a work dispute involving the Carpenters Council and the Employer's unrepresented employees, and the evidence of the nature of the Millwrights' conduct on September 9 in support of the Carpenters Council's claim for the work, we conclude, as explained below, that there is reasonable cause to believe that the Millwrights violated Section 8(b)(4)(D).

Phillips of Chicago Steel testified that when he first arrived at the picket line on September 9, Coyne, the Carpenters Council representative, was accompanied by Hooven. He testified that Hooven identified himself as an official of the Millwrights and gave Phillips a Millwrights' business card, and that Hooven told him that the Millwrights were present ''in support of what the Carpenters were doing at the gate.'' Hooven himself testified that he was an elected official of both the Carpenters Council and the Millwrights, and that the Millwrights local was a member of the Council. He further testified that Edward Coryell, president of the Carpenters Council, had, prior to September 9, requested Hooven to participate in the picketing, and ''to make sure [the picket line] was manned.'' Hooven testified that, accordingly, on his instructions, Millwright members were called and asked to participate at the picket line. As noted above, about one-half of the 20 or so pickets at the Fairless Works on September 9 were Millwright members. Hooven also testified that the Millwrights assisted at the picket line in order to ''help the Carpenters out,'' and additionally because he was aware of *machinery installation* work to be done in the near future at the Chicago Steel facility—''millwright work,'' in Hooven's estimation. After the cessation of the picketing on September 9, Hooven was present during the discussion with Chicago Steel officials at which the composite crew ''resolution'' concerning the foundation work was reached. Chicago Steel's contemplated machinery installation work was also then discussed, and according to Hooven's testimony, he came away from that discussion with the understanding that, at the very least, the Millwrights would be contacted with reference to this work at an appropriate time.[7]

In light of the evidence above, there is reasonable cause to believe that Hooven and the other Millwright members who participated in the picketing on September 9 did not act as individuals but as representatives or agents of the Millwrights. Further, there is reasonable cause to believe that the Millwrights acted in concert with, and in support of, the Carpenters Council in the picketing at the Fairless Works, with an object of coercing an assignment of the foundation work to employees represented by the Carpenters Council. Section 8(b)(4)(D) clearly prohibits conduct of the kind in which the Millwrights appear to have engaged. See *Lathers Local 59 (Jacksonville Tile)*, 125 NLRB 138, 142 (1959); *Plumbers Local 562 (Northwest Heating)*, 107 NLRB 542, 547–548 (1953). Accordingly, we conclude that there is reasonable cause to believe that the Millwrights' participation in the picketing on September 9 violated Section 8(b)(4)(D), and we deny the Unions' motion to quash in this regard.[8]

In sum, there is reasonable cause to believe that both Unions have violated Section 8(b)(4)(D) of the Act. Further, it was stipulated at the hearing that there is no agreed method binding all the parties to a voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Therefore, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors in-

[6] The area standards message apparently set forth on the picket signs does not preclude the finding that *one* of the Council's objectives was unlawfully to coerce a work assignment in its favor. See, e.g., *Roofers Local 30 (Gundle Construction)*, 307 NLRB 1429 (1992).

[7] Installation of machinery at the Chicago Steel facility at the Fairless Works is *not* included in the definition of the disputed work in this proceeding. The record indicates that as of the date of the hearing, such installation work had been assigned to a contractor who did not employ Millwright members. There is no evidence of picketing or threats after September 9.

[8] The Unions' motion to quash on grounds of mootness is also denied. The Unions contend that the disputed work has been completed and that no evidence was submitted that similar disputes will occur in the future. This does not satisfy the Board's standard, which establishes that ''the mere fact that disputed work has been completed does not render a jurisdictional dispute moot where nothing indicates that similar disputes are unlikely to recur.'' *Operating Engineers Local 150 (Martin Cement)*, 284 NLRB 858, 860 fn. 4 (1987). See also *Iron Workers California District Council (Madison Industries)*, 307 NLRB 405, 407 fn. 5 (1992); *Laborers Local 113 (Joseph Lorenz, Inc.)*, 303 NLRB 379, 380 fn. 2 (1991).

volved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the detemination of this dispute.

1. Certifications and collective-bargaining agreements

No evidence was placed in the record concerning any Board certifications or collective-bargaining agreements relevant to the determination of this work dispute. We find that this factor does not favor an award of the disputed work to either employee group.

2. Employer preference and past practice

The record, particularly the testimony of Robert Ferrell, a vice president of the Employer, makes clear that the Employer's preference was to perform the work with its own, unrepresented employees. This was the Employer's initial work assignment, and clearly it would have been maintained through the completion of the job in the absence of the instant dispute. Robert Ferrell also testified that in the 20 years that the Company has been operating, it has performed 100 concrete machine foundation jobs of the kind at issue here, in New Jersey, Delaware, and Pennsylvania, and that every one of them was carried out with the Company's own, nonunion employees. He also testified that the Employer used a composite crew of Carpenter-represented and nonunion employees pursuant to the agreement between the Carpenters Council and Chicago Steel only because Chicago Steel agreed to pick up any additional costs relating to the employment of Carpenter employees, and to cooperate with Chicago Steel in getting the project completed. Ferrell characterized the use of a composite crew as a matter of ''coercion.''

The Unions contend that the preference of both the Employer and Chicago Steel was for a composite crew of Carpenter-represented and nonunion employees, and that this preference is demonstrated by Chicago Steel's agreement on September 9 to complete the disputed work in this way and the Employer's accession to the agreement. In addition, the Unions' attorney, Richard C. McNeill, testified that he had a telephone conversation with Robert Ferrell on or about September 13 in which Ferrell stated that the Employer's ''preference'' was for an assignment to the composite crew.[9]

Even assuming that the Employer expressed a preference for the composite crew on or about September 13—a matter we find far less than clear on this record—we would assign it virtually no weight. The evidence and the circumstances establish that the composite crew agreement was a product of the September 9 picketing. Thus, it is apparent for purposes of this proceeding that Chicago Steel agreed to the composite crew in order to avoid further picketing and maintain labor peace, and that the Employer's consequent compliance was, as testified by Chicago Steel's Phillips, a matter of ''forcing this down [Ferrell's] throat.'' We have found that, by conducting the picketing, there is reasonable cause to believe that the Respondents engaged in coercive activity prohibited by Section 8(b)(4)(D). Consequently, we find that the composite crew ''resolution'' was the product of picketing unlawful under Section 8(b)(4)(D), and accordingly, it is not an appropriate matter for consideration regarding the employer-preference factor. See, e.g., *Teamsters Local 158 (Holt Cargo)*, 293 NLRB 917, 921 (1989).

We conclude that employer preference and past practice favor an award of the disputed work to the Employer's unrepresented employees.

3. Area and industry practice

No evidence was submitted concerning this factor. Accordingly, we find that this factor does not favor an award of the work in dispute to either employee group.

4. Relative Skills

Robert Ferrell testified that the Employer's unrepresented employees are designated in job classifications which correspond to the particular work they are doing at any particular time in performing the disputed foundation work: carpenters, iron workers, laborers, and cement finishers. Notwithstanding these designations, according to the Employer its employees' skills overlap and are virtually interchangeable: for example, a ''carpenter'' also has ironworker and finisher skills and performs this and other work. Robert Ferrell also testifed that the skills of the Carpenter-represented employees in the composite crew were restricted to carpentry work, and accordingly, their usefulness was relatively limited.

The Unions contend in their brief that the skills of the Carpenter employees and the unrepresented employees in the composite crew were equivalent, but no evidence was submitted in support of this contention.

We find that the evidence concerning this factor favors an award to the Employer's unrepresented employees.

5. Economy and efficiency of operations

Robert Ferrell's testimony indicates that the Employer's unrepresented employees have multiple, interchangeable skills relevant to performing the disputed work, that the Employer is familiar with its own employees' skills and abilities and that they are familiar with each others', and that this work relationship created an economical and efficient operation with respect

[9] McNeill testified to Ferrell's expression of this ''preference'' on direct examination, but did not repeat it when given the opportunity on cross-examination. Ferrell denied that he had made any such statement to McNeill.

to the disputed work. Ferrell also testified that there was a disruption in this work relationship when the Carpenter-represented employees were added to the crew because their skills and abilities were at first unkown, and then shown to be limited.

The Unions submitted no evidence concerning the economy and efficiency factor.

We find that the evidence relating to this factor supports an award of the disputed work to the Employer's unrepresented employees.

Conclusions

After considering all the relevant factors, we conclude that the Employer's unrepresented employees are entitled to perform the work in dispute. We reach this conclusion relying on the factors of employer preference and past practice, relative skills, and economy and efficiency of operation. This determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of J. W. Ferrell Concrete Co., Inc., who are not represented by any labor organization, are entitled to perform the concrete machine foundation work at the premises leased by Chicago Steel Ltd., on U.S. Steel Group's Fairless Works property, Falls Township, Pennsylvania.

2. Metropolitan District Council of Philadelphia and Vicinity, United Brotherhood of Carpenters and Joiners of America, and Millwright and Machinery Erectors Union Local 1906 are not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Chicago Steel Ltd. and J. W. Ferrell Concrete Co. to assign the disputed work to employees represented by the Metropolitan District Council.

3. Within 10 days from this date, Metropolitan District Council of Philadelphia and Vicinity, United Brotherhood of Carpenters and Joiners of America, and Millwright and Machinery Erectors Union Local 1906 shall each notify the Regional Director for Region 4 in writing whether it will refrain from forcing Chicago Steel Ltd. and J. W. Ferrell Concrete Co. by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.